IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

IN THE MATTER OF JACOB YUNGBLUTH and AUGUST W. SCHAFER, co-partners doing business under the firm name and style of Bank of Hamilton, Jacob Yungbluth & Co. Proprietors, and Bank of Hamilton, A. W. Schafer & Company, Proprietors; and A. W. Schafer & Company, Private Bank; Jacob Yungbluth and A. W. Schafer,

Bankrupts,

No. 2418

BRIEF OF APPELLANT

JACOB YUNGBLUTH

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GEORGE FRIEND,
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Seattle, Washington.

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STATEMENT

There are but two questions involved in this appeal, and they are:

A. Has the court any authority or jurisdiction over the exempt property of the bankrupt (the ap-

pellant) after it has once been determined that such property is exempt?

B. If the court has such jurisdiction, did it commit error in subjecting apellants' homestead to the payment of the $500.00 which he owed the estate?

The facts in this case are that the bankrupt has been held by this court on a former appeal (185 Fed. 773) to have been to all intents and purposes a partner in the Bank of Hamilton, but a reference to the record in the former appeal (being case No. 1859 of the records of this court), it will be seen that appellant sold out his interest in the bank on January 25, 1905, but this court held the sale was so silently conducted as to be a mere make-shift and so did not relieve appellant from his responsibility.

Bankrupt following said dissolution and on June 10th, 1905, and seventeen months before the bank failed, purchased the property in question and which he has ever since used and occupied as a homestead.

When appellant filed his schedules he included this property but claimed it as exempt and the trustee in compliance with the law set the property aside as a homestead. Certain creditors appeared and objected to the allowance of the exemptions and the referee allowed all the exemptions claimed,

including the property in question, but held that in order to pay $500.00 which appellant had borrowed from the bank the referee should sell the homstead unless the appellant repaid the money and interest which would make a total of about $800.00.

Now, when appellant purchased the property he borrowed $500.00 of the First National Bank of Mt. Vernon, and later in the year 1907 the bank paid the Mt. Vernon Bank the $500.00 and took appellant's note for that amount which note is now held by the trustee.

It seemed to be the theory of the referee and the District Court that because appellant borrowed the money from the bank to repay the Mt. Vernon Bank that it constituted a fraud upon his creditors. We contend that the court had no authority or jurisdiction over the property, for under the laws of the State of Washington it was exempt and under the bankrupt law neither the trustee nor the court had any right to it, that is to say, that the property being exempt did not pass to the trustee.

We rely mainly on the case of *Lockwood v. Exchange Bank,* 190 U. S. 294, 47 Law. Ed. 1061, in which the Supreme Court of the United States held that title to property of a bankrupt generally ex-

empted by state laws, should remain in the bankrupt and not pass to his representative in bankruptcy, in which it said:

> "The fact that the Act of 1898 confers upon the court of bankruptcy, authority to control exempt property in order to set it aside, and thus exclude it from the assets of the bankrupt estate to be administered, affords no just ground for holding that the court of bankruptcy must administer and distribute, as included in the assets of the estate, the very property which the act in unambiguous language, declares shall not pass from the bankrupt, or become part of the bankruptcy assets."

The bankrupt laws provide in Clause 11 of Section 2, Courts of Bankruptcy are vested with jurisdiction to "determine all claims of bankrupts to their exemptions."

Sec. 6. "This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater part thereof immediately preceeding the filing of the petition."

By Clause 8 of Section 7 the bankrupt is required to schedule all his property and to make a claim for such exemptions as he may be entitled to.

By Clause 11, Section 47, it is made the duty of the trustee to set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

By Section 67 it is provided that the property of the debtor fraudulently conveyed, etc., "shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt," etc.

In Section 70 is enumerated the property of the bankrupt which is to vest in the trustee as of the date of adjudication in bankruptcy "except in so far as it is to property which is exempt."

The Lockwood case has been cited and followed in

143 Fed. 1019, 51 S. E. 32;
In re Tugram, 125 Fed. 913;
In re Nye, 133 Fed. 34;
In re Downing, 148 Fed. 120;
In re Royce, 133 Fed. 108;
In re Mackissic, 71 Fed. 259;
In re O'Rear, 189 Fed. 888;
Huntington v. Baskerville, 192 Fed. 813;
In re Cheatham, 210 Fed. 370;
Graves v. Osborne (Ore.) 79 Pac. 500.

The constitution of the State of Washington concerning homesteads is contained in Article XIX and is as follows:

> "The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families."

Sec. 552 of Vol. 1 of Remington & Ballinger's Code (Laws of 1895, page 112) is as follows:

> "Homesteads may be selected and claimed in lands and tenements with the improvements thereon, not exceeding in value the sum of Two Thousand Dollars. The premises thus included in the homestead must be actually intended and used for a home for the claimants, and shall not be devoted exclusively to any other purposes."

It was not contended in the lower court that the property claimed by appellant was not under the state laws exempt, in fact the court held it was exempt but that it was subject to the claim of $500.00 and interest.

Even where a bankrupt in contemplation of bankruptcy takes property not exempt and converts it into exempt property the courts cannot reach it. 43 Fed. 702. 79 Fed. 706. 116 Fed. 31. 120 Fed. 733. 163 Fed. 924.

The Federal Courts are bound by the state laws and decisions in homestead matters.

Bank v. Glass, 79 Fed. 706;

In re Cochran, 185 Fed. 913.

The undisputed facts are that appellant purchased this homestead property in June, 1905, and the bank did not fail until November, 1907. How can that be deemed fraud upon creditors?

The property was acquired long before the contemplated bankruptcy.

The cases cited above hold that the bankrupt has a right to convert into exempt property that which was not exempt in contemplation of bankruptcy.

What are exempt laws for but as a place of refuge from the storm of creditors?

We respectfully submit that the judgment of the referee and District Judge should be set aside.

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